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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/921,762	08/03/2001	Justin M. Smyers	RPC 0575 PUS	8756
33171	7590	06/18/2004		
KONSTANTINE J. DIAMOND 4010 E. 26TH STREET LOS ANGELES, CA 90023			EXAMINER CASTELLANO, STEPHEN J	
			ART UNIT	PAPER NUMBER
			3727	

DATE MAILED: 06/18/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Notification of Non-Compliance  
With 37 CFR 1.192(c)**

Application No.

09/921,762

Applicant(s)

SMYERS ET AL. 

Examiner

Stephen J. Castellano

Art Unit

3727

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address--**

The Appeal Brief filed on 05 April 2004 is defective for failure to comply with one or more provisions of 37 CFR 1.192(c). See MPEP § 1206.

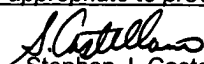
To avoid dismissal of the appeal, applicant must file IN TRIPLICATE a complete new brief in compliance with 37 CFR 1.192(c) within the longest of any of the following three **TIME PERIODS**: (1) **ONE MONTH or THIRTY DAYS** from the mailing date of this Notification, whichever is longer; (2) **TWO MONTHS** from the date of the notice of appeal; or (3) within the period for reply to the action from which this appeal was taken. **EXTENSIONS OF THESE TIME PERIODS MAY BE GRANTED UNDER 37 CFR 1.136.**

1. ☐ The brief does not contain the items required under 37 CFR 1.192(c), or the items are not under the proper heading or in the proper order.
2. ☐ The brief does not contain a statement of the status of all claims, pending or cancelled, or does not identify the appealed claims (37 CFR 1.192(c)(3)).
3. ☐ At least one amendment has been filed subsequent to the final rejection, and the brief does not contain a statement of the status of each such amendment (37 CFR 1.192(c)(4)).
4. ☐ The brief does not contain a concise explanation of the claimed invention, referring to the specification by page and line number and to the drawing, if any, by reference characters (37 CFR 1.192(c)(5)).
5. ☒ The brief does not contain a concise statement of the issues presented for review (37 CFR 1.192(c)(6)).
6. ☐ A single ground of rejection has been applied to two or more claims in this application, and
  - (a) ☐ the brief omits the statement required by 37 CFR 1.192(c)(7) that one or more claims do not stand or fall together, yet presents arguments in support thereof in the argument section of the brief.
  - (b) ☐ the brief includes the statement required by 37 CFR 1.192(c)(7) that one or more claims do not stand or fall together, yet does not present arguments in support thereof in the argument section of the brief.
7. ☐ The brief does not present an argument under a separate heading for each issue on appeal (37 CFR 1.192(c)(8)).
8. ☐ The brief does not contain a correct copy of the appealed claims as an appendix thereto (37 CFR 1.192(c)(9)).
9. ☒ Other (including any explanation in support of the above items):

Item 5: Several of the issues, several of the grounds of rejection and the arguments section make reference to "prior art Fig. 1" as being the reference being relied upon. The rejections are clear in stating "the admitted prior art." The admitted prior art includes both Fig. 1 and appropriate sections of the specification which describe prior art. For clarity sake, it would be more proper for appellant to rewrite the brief stating "admitted prior art." Also, appellant has a long standing tendency of stating the issues in a "the final rejection of ... is improper" format which is a conclusion rather than an issue. It would be more proper for appellant to adopt a "whether the final rejection of ... is proper (improper) format which states the issue.

Item 9: Page 12, paragraph 2, line 3 of the brief refers to parts shown in red. Since this is an IFW application an appellant's papers are scanned in black and white, nothing is shown in red. Appellant may be able to send or hand carry papers with red markings to the examiner and the Board so that the Office may see what is red.

Note that these items are not meant to delay action on the brief, but are deemed appropriate to provide a clear record.

  
Stephen J. Castellano  
Primary Examiner  
Art Unit: 3727